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October 16, 2006

ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20554

Subject: In the Matter of Payphone Access Line Rates, Docket CC No. 96-128.

Dear Ms. Dortch:

We represent 51 payphone service providers ("Payphone Providers") in 11 states who are suing Qwest in federal court (in the "*Davel*" case) for overcharging them for payphone services, in violation of the Telecommunications Act, this Commission's implementing orders and the Commission's new services test ("NST"). The plaintiffs in the *Davel* case filed a petition for declaratory ruling in this docket on September 11, 2006 ("Petition").¹

The Payphone Providers submit this letter to respond to arguments by AT&T, Bell South, and Verizon ("RBOCs") in this docket on September 6, 2006. In particular, the Payphone Providers will demonstrate why the Commission should reject RBOCs' argument that the April 15, 1997 Waiver Order² only required refunds for the 34 day period from April 15th to May 19, 1996. Summarized, the RBOCs' September 6th arguments were that:

Payphone providers' petitions constitute improper collateral challenges to state commission determinations and state court judgments.

The availability of refunds depends on state law, including state procedural rules.

Whether a particular state determination is correct under the particular facts of the case is not an appropriate topic for a declaratory ruling.

¹ A complete listing of the clients in the *Davel* case is attached to the Petition.

² *In re Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Order*, 12 FCC Rcd 21,370 (Apr. 15, 1997) ("Waiver Order").

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The RBOCs sole commitment was to make specific filings – that is, those made pursuant to a Bureau waiver order – effective 34 days prior to their actual filing.

The first three arguments were addressed to the other petitions in this docket, of course, not the Petition against Qwest. The Payphone Providers merely wish to reiterate that those arguments can have no bearing whatsoever on their Petition, because unlike the other RBOCs, Qwest never sought state commissioner review or approval of its PAL rates from 1997 to 2002. Thus, there are no state commission or court orders to challenge, no state procedures that were invoked, and no state determinations for the Commission to review.

The fourth argument—an argument even Qwest does not make—is groundless. because (1) a 34 day refund period would violate the law that prohibits the Bureau from waiving statutory requirements like the NST, (2) a 34 day refund period would subvert the goals of Section 276 of the Telecommunications Act, (3) the plain language of the Waiver Order does not support a 34 day refund period, and (4) a 34 day waiver period is inconsistent with the RBOCs original request³ for the Waiver Order. The RBOC Coalition's only support for a 34 day refund period is its own wishful thinking.

I. A 34 DAY REFUND PERIOD WOULD VIOLATE THE PROHIBITION AGAINST WAIVING STATUTORY REQUIREMENTS

The Commission must address the question of how long after April 15, 1997 the RBOCs' refund obligation under the Waiver Order extended. The RBOC Coalition contends that the refund obligation only ran for 34 days, from April 15th until May 19th. The Payphone Providers contend the refund obligation ran until the RBOCs had in effect PAL tariffs that complied with the NST. Indeed, Qwest agrees on this point:

[The] carriers promised to make . . . refunds for rates paid between [April 15, 1997] and the effective date of the new tariffs. The refunds were to cover the period between April 15, 1997 and the date on which tariffs . . . took effect. . . . [W]hatever waiver of the filed tariff doctrine was envisioned by the Wavier Order was fulfilled upon the effective date of the new tariff

Qwest Ex Parte Filing (Sept. 5, 2006)(emphasis added).

The 34 day refund period proposed by the RBOC Coalition would in effect be an illegal waiver by the Bureau of the statutory requirement that Qwest must meet the NST. The Bureau only has authority to “[a]ct on requests for interpretation or waiver of *rules*.” 47 C.F.R.

³ The request was made in 1997 by the “RBOC Coalition,” which included all three of the RBOCs and other companies.

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§ 0.91(b)(emphasis added). The Bureau cannot waive compliance with a *statute*.⁴ Since Section 276 required RBOCs to comply with the NST no later than April 15, 1997,⁵ the Waiver Order did not and could not waive the RBOC's obligation to comply with the NST. In contrast, the bar against the RBOCs collecting DAC before they complied with the NST was not mandated by Section 276. It was a Commission rule. See *Reconsideration Order*, ¶ 131. So, the only requirement that the Waiver Order waived was the requirement that RBOCs meet the NST before collecting DAC on April 15, 1997.

Due to these limits on the Bureau's authority, the waiver was limited and conditional. Under the waiver, RBOCs who wished to start collecting DAC on April 15, 1997, had to file their cost support with the states to review their existing PAL rates for NST compliance by May 19, 1997. If their existing PAL rates did not comply with the NST, they also had to file new tariffs with the states at rates they believed complied with the NST. And finally, they had to pay refunds to PAL customers based on the difference between the new rates, "*when effective*," and the existing PAL rates retroactive to April 15, 1997. None of this is consistent with the RBOCs' argument for a 34 day refund period.

II. A 34 DAY REFUND PERIOD WOULD SUBVERT THE GOALS OF SECTION 276 OF THE TELECOMMUNICATIONS ACT AND THE WAIVER ORDER

The 34 day refund period would not only be illegal. It would also undercut purpose of the Waiver Order, which was to advance "the twin goals of Section 276 of the Act," which are to "promot[e] both competition among payphone service providers ("PSPs") and the widespread deployment of payphone services to the benefit of the general public." Waiver Order at ¶ 3. Both goals could only be fully realized if two aspects of the Payphone Orders and Section 276 were fully and timely implemented on April 15, 1997. First, the RBOCs had to eliminate discriminatory access line and features tariffs by complying with the NST. This would promote fair competition and, by lowering costs of deployment, would lead to more widespread deployment of payphones. Second, RBOCs could receive dial around compensation ("DAC"). This would also promote a level competitive playing field and would, by increasing RBOCs' payphone revenues, lead to deployment of more payphones. Thus, if the Waiver Order blocked

⁴ The Commission is "without authority to waive statutory violations." In the Matter of Schools and Libraries Universal Service Support Mechanism, Fifth Report And Order And Order, 19 FCC Rcd 15808 at ¶ 29 (2004).

⁵ Section 276 refers to "the nonstructural safeguards equal to those adopted in the Computer Inquiry-III (CC Docket No. 90-623)," which include the New Services Test. 47 U.S.C. 276 (b)(1)(C). NST compliance was a necessary part of compliance with Section 276(a)(2), which prohibited RBOC discrimination in favor of their own payphones after the effective date of the rules adopted by the Commission in Section 276(b). The Section 276(b) rules (providing for dial-around compensation, elimination of subsidies, etc.) took effect April 15, 1997.

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or delayed implementation of either requirement, then the order would not and could not have had its intended affect of advancing the goals of Section 276.

The reason that allowing RBOCs to collect DAC under the conditions of the Waiver Order before they complied with the NST was expected to advance, rather than hinder, the twin goals of Section 276 is because the refund provisions were expected to have the same effect as NST compliance, *as if* such compliance had been in place by April 15, 1997. Since the RBOCs were required to file costs with the states by May 19, 1997, the expectation was that state review of the existing PAL tariffs and any necessary rate revisions would be implemented reasonably soon thereafter. The Bureau likely did not expect that one RBOC—Qwest—would fail to file any costs or NST-compliant rates for more than five years.

It makes no sense for the refund period to be only 34 days because that would leave no time for state commissions under typical state procedures to review the cost and tariff filings required by the Waiver Order and for new tariffs to take effect. For example, if an RBOC filed NST-compliant tariffs by the May 19, 1997 deadline that lowered PAL rates by \$10, the new rates would not go into effect immediately in most states. A typical notice period would be 30 days. *See, e.g.*, Rev. Code Wash. 80.36.110(1)(a).⁶ A state might be able to suspend a tariff for up to nine months or more for investigation, discovery, and hearings. *See, e.g.*, Rev. Code Wash. 80.04.130(1). Thus, the lower rate might not go into effect for almost a year after April 15, 1997. All this time, the RBOC would be violating the prohibition against discrimination in Section 276. Accordingly, only an open-ended refund obligation makes sense because only an open-ended refund obligation ensures that the discrimination prohibited by statute would be eliminated retroactively.

III. THE HISTORY AND PLAIN LANGUAGE OF THE WAIVER ORDER DOES NOT SUPPORT A 34 DAY REFUND PERIOD

Interpretation of the refund obligation as open-ended not only makes sense in light of the goals of Section 276 and the goals of the Waiver Order, it is the only interpretation consistent with the words chosen in the Order, as well as the history of the Order. On November 8, 1996, this Commission issued its Order on Reconsideration (FCC 96-439, CC Docket No. 96-128 and 91-35) (“Order on Reconsideration”). Paragraph 163 of the Order on Reconsideration made it clear that RBOCs’ intrastate tariffs “must be *filed* no later than January 15, 1997 and must be *effective* no later than April 15, 1997;” and that those tariffs must be “(1) cost based; (2) consistent with the requirements of Section 276 with regard, for example,

⁶ Subject to certain limitations depending on the procedures followed and commitments made by the utility filing the tariff. This statute is illustrative only, because state procedures vary widely. But delays in approving or modifying a tariff filing of several years are common. In Oregon, Qwest’s PAL rates have been under investigation since 1995 and are still unresolved more than 10 years later.

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to the removal of subsidies from exchange and exchange access services; and (3) nondiscriminatory.” Order on Reconsideration, ¶ 163 (emphasis added). Thus, the RBOCs had five months' notice that their intrastate payphone tariffs would have to be NST-compliant, and that such compliance might require rate revisions.

On April 4, 1997, the FCC issued its first waiver order (DA 97-678, CC Docket No. 96-128). In that order, the FCC granted RBOCs a “limited waiver” of the deadline for filing federal interstate tariffs for unbundled features and functions. That “limited waiver” allowed RBOCs to file such federal tariffs by May 19th, and have them become effective 15 days later, while still receiving dial-around compensation. However, that order reiterated that LECs would also have to have on file effective, NST-compliant, *intrastate* tariffs by April 15, 1997, in order to receive dial-around compensation. That first waiver order also concluded that the Commission did not have a sufficient record in front of it to determine whether the RBOCs’ intrastate basic PAL line tariffs complied with the NST, and specifically left determination of NST compliance to the states. *Id.* at ¶ 35. That order did not require refunds, as the Commission itself could review the rates filed by May 19, 1997, and, if appropriate, could issue suspension and/or accounting orders in that time, which would have the practical effect of requiring refunds should the rates subsequently be determined to be non-compliant.

On April 7, 1997, the RBOC Coalition once again submitted an *ex parte* filing, which expressed their members' complete surprise (despite the clarity of the Order on Reconsideration) that their members’ *intrastate* rates would also have to be NST-compliant in order to receive dial-around compensation. Exhibit A (April 7, 1997 Kellogg letter). The RBOC Coalition (including Qwest) returned to this Commission only days later to beg for a waiver of the requirement that they have NST-compliant tariffs in effect by April 15, 1997 in order to receive millions of dollars in dial-around compensation. Exhibit B (April 10, 1997 Kellogg Letter).

Essentially, the RBOCs asked that the limited waiver issued by the Commission in the April 4th order for interstate tariffs be applied to intrastate payphone tariffs as well, with one significant twist. The RBOCs recognized that the process for examination and approval of intrastate tariffs at the state level might take much longer than the 15 days allowed on the federal level. Thus, the RBOCs offered that “**once the new state tariffs are in effect**, to the extent that the new tariff rates are lower than the existing ones [because of NST compliance] we will undertake to reimburse or provide a credit to those purchasing the services back to April 15, 1997.” April 10, 1997 Kellogg letter at 2 (emphasis added). The RBOCs’ stated purpose in offering the refund was to insure that the Payphone Providers “will suffer no disadvantage.”

The following day, the RBOCs further clarified what they were offering:

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To the best of my knowledge, all the RBOCs have (or will by April 15, 1997, have) effective state tariffs for all the basic payphone lines and unbundled features and functions required by the Commission's order. We are not seeking a waiver of that requirement. *We seek a waiver only of the requirement that those intrastate tariffs satisfy the Commission's "new services" test.* The waiver will allow LECs 45 days (from the April 4 Order) to gather the relevant cost information and either be prepared to certify that the existing tariffs satisfy the costing standards of the "new services" test or to file new or revised tariffs that do satisfy those standards. Furthermore, as noted, where new or revised tariffs are required and the new tariff rates are lower than the existing ones, we will undertake (consistent with state requirements) to reimburse or provide a credit back to April 15, 1997 to those purchasing the services under the existing tariffs.

Exhibit C at 1 (April 11, 1997 Kellogg Letter). It is worth noting that each of the Payphone Providers are one of "those purchasing the service under the existing tariffs."

This Commission adopted the RBOCs proposal in the Waiver Order. Hence, the compliance obligations are subject to the explicit filing deadline of May 19, 1997. In contrast, the refund obligation is not limited, except by reference to the "effective" date of the NST-compliant tariffs. This difference in the language of the order occurs not once, but repeatedly. The drafters were not careless. Rather, the phrases chosen were intended to accomplish compliance with the NST on the deadline of April 15, 1997, by a fully—rather than limited—retroactive application of the compliant tariffs. This Commission included an open-ended refund obligation exactly *because* neither the RBOCs nor the Commission could have any confidence as to any specific date by which the RBOCs' NST-compliant tariffs would be "effective" with the states, as each state had its own procedures. Thus, while the filing deadline is firm (i.e., May 19, 1997), the refund deadline is not.

IV. **A 34 DAY WAIVER PERIOD IS INCONSISTENT WITH THE RBOCS ORIGINAL REQUEST FOR THE WAIVER ORDER**

Interpretation of the refund obligation as open-ended is also consistent with the RBOCs' request. Though the RBOCs (but not Qwest) argue differently now, it is clear that at the time they requested the waiver, they expected to pay refunds from the date the tariffs became effective in the states, even if that date was much later than May 19, 1997. The RBOC Coalition's letter stated:

Specifically, we request that the Commission grant us 45 days from the April 4th Order to file new intrastate tariffs, in those States and for those services where new tariffs are required. Unlike with federal tariffs, there is of course **no**

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guarantee that the States will act within 15 days on these new tariff filings, particularly where rates are being increased pursuant to federal guidelines.

Exhibit B (April 10, 1997 Kellogg letter) (emphasis added). The RBOCs were asking for a similar waiver to what one the Bureau granted on April 4, 1997. But they pointed out that under state procedures they could not know when the new state tariffs would become effective. Thus, they only committed to file by May 19. In order to ameliorate the likely state delay, they requested an open-ended waiver of when they would have to have NST-compliant rates in effect as well as an open-ended refund period:

Provided, however, that **we undertake and follow-through on our commitment** to ensure that existing tariff rates comply with the “new services” test and, in those States file new tariff rates that will comply, we believe that we should be eligible for per call compensation starting on April 15th. **Once the new state tariffs go into effect**, to the extent that the new tariff rates are lower than the existing ones, we will undertake to reimburse or provide a credit to those purchasing the services back to April 15, 1997.

Exhibit B (April 10, 1997 Kellogg letter) (emphasis added). If the RBOCs had intended to limit their commitment to refund only from May 19 back to April 15, they would have instead said, “Once the new state tariffs are filed we will reimburse...”, rather than “once the tariffs go into effect...”.

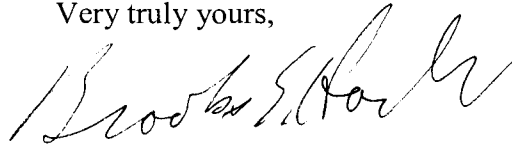
Because state commissions were likely to need much more than 34 days to review NST cost and tariff filings, the RBOCs **needed** open-ended waiver of the effectiveness of NST-compliant tariffs as well as an open-ended refund obligation. Otherwise, in states where they had to file new tariffs, they could only collect DAC between April 15 and May 19, unless by some miracle the state commission completed its review by May 19, 1997. Since the RBOCs who made filings by May 19, 1997, generally did so on or just a day or two before the 19th, it was a near certainty that NST-compliant tariffs would not be in effect until after the 19th. The Bureau responded to this need with an order that set a hard date only for the required state filings, but left actual compliance and refunds open-ended, in order to “advance the twin goals” of the statute.

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V. **CONCLUSION**

The Commission, in issuing its declaratory order in this docket, should rule that the Waiver Order requires refunds from the effective date of NST-compliant tariffs retroactive to April 15, 1997, with no limitation on the length of the refund period.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Brooks E. Harlow".

Brooks E. Harlow

cc w/enc: Ms. Pamela Arluk (via e-mail)
Ms. Amy Bender (via e-mail)
Ms. Lynne Engledow (via e-mail)
Ms. Diane Griffin Holland (via e-mail)
Mr. Christopher Killion (via e-mail)
Mr. Albert Lewis (via e-mail)
Mr. Marcus Maher (via e-mail)
Ms. Tamara Preiss (via e-mail)
Ms. Paula Silberthau (via e-mail)
Mr. Donald Stockdale (via e-mail)
Mr. Matt Warner (via e-mail)

EXHIBIT A

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

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April 7, 1997

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William F. Caton, Secretary
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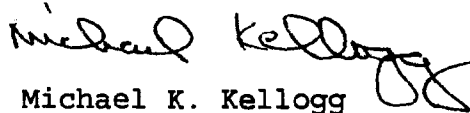
In re Matter of the Pay Telephone
Reclassification and Compensation
Provisions of the Telecommunications
Act of 1996, CC Docket No. 96-128

Dear Mr. Caton:

Enclosed for filing in this docket are the original and one copy of a letter to Mary Beth Richards and Kathy Franco regarding the above-captioned matter. I sent this letter to Ms. Richards and Ms. Franco today on behalf of the RBOC Payphone Coalition. I would ask that you include the letter in the record of this proceeding in compliance with 47 C.F.R. § 1.1206(a)(2).

If you have any questions concerning this matter, please contact me at (202) 326-7902. Thank you for your consideration.

Yours sincerely,


Michael K. Kellogg

cc: Mary Beth Richards
Kathy Franco

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April 7, 1997

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In re Implementation of the Pay Telephone
Reclassification and Compensation Provisions
of the Telecommunications Act of 1996,
CC Docket No. 96-128

Dear Mary Beth and Kathy:

On behalf of the RBOC Payphone Coalition, I write in regard to the March 20, 1997 ex parte letter submitted by MCI, the March 28, 1997, ex parte letter submitted by AT&T, and the Commission's Order of last Friday, April 4, 1997 ("April 4 Order") in the above-captioned proceeding. MCI's and AT&T's letters both express concern that RBOCs have not filed rate revisions to eliminate intrastate payphone subsidies, and the Commission accordingly has clarified that intrastate payphone subsidy removal is a pre-requisite to RBOC eligibility for per-call compensation.

In the Coalition's view, MCI's and AT&T's complaints are unfounded and are being registered with the Commission prematurely. The payphone orders are clear: The removal of intrastate payphone cost recovery is a matter for the States in the first instance. Order on Reconsideration ¶ 131. The RBOCs are actively working with the States to identify and eliminate any intrastate payphone subsidies. To the extent AT&T and MCI wish the States to handle this matter differently than they are, they should so advise the state commissions before complaining to the FCC. If AT&T and MCI still believe there is a subsidy in a

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particular state after exhausting state remedies, then they should file a complaint with the Commission as indicated in the Bureau's April 4 Order (at 15 n.93).

Nevertheless, the Coalition does believe it appropriate to keep the Commission advised on how its orders and Congress's commands currently are being implemented in the States. Accordingly, the Coalition offers the following general description of how intrastate payphone subsidies are being identified and eliminated, the status of that process in each State, and a brief response to some of the arguments raised by AT&T and MCI regarding the magnitude of subsidies identified.

A. Cost/Subsidy Removal. Coalition members are removing intrastate payphone cost recovery elements and subsidies through a two-step process. First, they look to see whether any payphone cost recovery rate elements exist as part of non-payphone services rates. If so, such payphone cost recovery rate elements are eliminated. It turns out that very few States explicit payphone cost recovery rate elements in non-payphone services rates.

Second, Coalition members look to historical intrastate costs and intrastate payphone revenues to ensure that, even if payphone cost recovery rate elements have not been built into non-payphone services rates *explicitly*, payphone costs have not been recovered *implicitly* from non-payphone services rates. Specifically, each Coalition member looks at intrastate payphone costs and compares them to intrastate payphone revenues. If costs exceed revenues, the Coalition member treats the difference as if it were a subsidy and takes appropriate action to eliminate it. In North Carolina, for instance, BellSouth eliminated the historical intrastate payphone subsidy of \$2.4 million by adjusting the flat rate hunting charge so as to reduce revenue by \$2.4 million.

As you can see from the attached chart, this process has shown that there was an intrastate subsidy in some States but not others. This is to be expected, as each State has different regulatory treatment, different rates for payphone service, and different payphone costs.¹

¹It is for this reason that AT&T's reliance on the elimination of \$900,000 in subsidies in Alaska is misplaced. The amount of subsidies in Alaska depends not only on the number of

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B. Subsidy Amounts. It is the Coalition's understanding that, based on an estimate of interstate subsidies, some interexchange carriers have estimated that intrastate subsidies may be as high as \$750 million. But these arguments are fatally flawed. They assume that, because 75 percent of all costs are allocated to the intrastate jurisdiction and 25 percent to the interstate jurisdiction, then 25 percent of all subsidies will appear in the interstate and 75 percent in the intrastate. This assumption is simply wrong, because revenues do not follow the 75 percent/25 percent formula.

Coalition members do allocate approximately 25 percent of their payphone costs to the federal side. But every dime in federal payphone cost recovery comes through a subsidy -- the CCL charge -- because there is no interstate payphone rate through which those costs otherwise could be recovered. Thus, there are interstate payphone costs, but no direct interstate payphone revenues. Consequently, 100 percent of interstate payphone costs are recovered by means of a subsidy.

In contrast, all or almost all of intrastate payphone costs can be recovered directly through intrastate payphone revenues. This is true because, while about 75 percent of payphone costs are allocated to the intrastate jurisdiction, 100 percent of direct payphone revenues come from the intrastate jurisdiction. Since all or almost all intrastate payphone costs can be recovered through intrastate payphone revenues, intrastate payphone subsidies are typically small or non-existent.

Indeed, there is only one situation where the 25 percent/75 percent formula used by the interexchange carriers would be accurate: If Coalition members recovered all of their intrastate payphone costs through a subsidy, as they did with all of their interstate costs. But there is no State in which payphone service is free, and thus no State in which 100 percent of intrastate costs are recovered through intrastate subsidies.

payphones, but on the amount of payphone cost recovery allowed in the past, as well as the cost of providing payphone service in that unusually harsh environment. Alaska is a high-cost state and it has had artificially low coin rates. In any event, in many States, Coalition members have eliminated subsidies many times the size of the subsidy identified by Alaskan LECs.

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It is also the Coalition's understanding that the interexchange carriers are arguing that "subsidy removal" requires RBOCs not only to eliminate historic subsidies, but also to reduce their intrastate rates by an amount equal to expected income from per call compensation. See AT&T March 28 ex parte at 3. MCI argued this position before the Florida PSC, which properly rejected it. The purpose of the Act, as was made clear in the payphone orders, was to remove payphone subsidies, not to offset the higher costs of the IXC's who are required, for the first time, to pay per-call compensation to RBOCs on dial-around calls. This was the very conclusion reached by the Florida PSC, which deemed MCI's argument "unpersuasive" since "[t]he objective is to eliminate any LEC payphone subsidy, not offset the IXC's higher costs for dial-around compensation." Order, Petition by MCI Telecommunications Corporation for an order requiring BellSouth Telecommunications, Inc. to remove its deregulated payphone investment and associated expenses from its intrastate operations and reduce the Carrier Common Line rate element of its intrastate switched access charges by approximately \$36.5 million, Florida P.S.C. Docket No. 970173-TP at 5 (March 31, 1997) ("Florida Order").

Finally, the Coalition believes that some carriers are arguing to the Commission that, where subsidies are detected, any rate reductions must come out of access rates, and cannot come out of some other rate. But the argument is being raised in the wrong forum, as the question of how subsidies are eliminated is a question for the state commissions, which have sole responsibility for setting intrastate rates. Moreover, the argument lacks merit. Where payphone cost rate elements are explicitly recovered in a particular non-payphone rate, cost recovery should be eliminated from that rate. Where payphone costs were implicitly recovered from other, unidentified services -- where there is no explicit payphone cost recovery rate element built into non-payphone rates, but payphones revenues still were not covering payphone costs -- the subsidy could be in any rate or all rates. For this reason, the Florida PSC rejected MCI's argument that access charges, rather than rates for other services, had to be reduced:

Unlike the interstate case where a portion of the payphone investment and expense is specifically recovered through the CCL, any intrastate payphone subsidy could be recovered anywhere. Since intrastate rates are not based on allocated costs, there is no way of determining which rate elements are contributing to any payphone subsidy.

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Florida Order at 5. In such a situation, the States must have the discretion to identify which rates will be adjusted to eliminate the subsidy. The States not only are more familiar with local conditions, but have sole authority to regulate rates for the affected intrastate services.

I hope you find this update helpful and informative. If I can offer any further information or be of assistance, please feel free to call.

Sincerely yours,


Michael K. Kellogg

cc: Dan Abeyta	Linda Kinney
Thomas Boasberg	Carol Matthey
Craig Brown	A. Richard Metzger
Michelle Carey	John B. Muleta
Michael Carowitz	Judy Nitsche
James Casserly	Brent Olson
James Coltharp	Michael Pryor
Rose M. Crellin	James Schlichting
Dan Gonzalez	Blaise Scinto
Christopher Heimann	Anne Stevens
Radhika Karmarkar	Richard Welch
Regina Keeney	Christopher Wright

BELL ATLANTIC				
STATE	EXPLICIT RATE ELEMENTS	HISTORIC REVENUE SHORTFALL	INTERVENORS (Date)	ADJUSTMENT (Effective Date)
Delaware	None	None	None	None
Maryland	None	None	AT&T (Letter filed 03/28)	None
New Jersey	None	None	None	None
Pennsylvania	None	None	None	None
Virginia	None	None	MCI (Letter filed 02/10)	None
West Virginia	None	None	None	None
Washington, D.C.	None	None	None	None

BELLSOUTH

STATE	EXPLICIT RATE ELEMENTS	HISTORIC REVENUE SHORTFALL	INTERVENORS (Date)	ADJUSTMENT (Effective Date)
Alabama	None	None	AT&T (3/25); Gulf States Pub. Comm. Council (3/25)	Cost Study Filed
Florida	None	\$6,500,000	MCI (2/7); Fla. Pub. Comm. Council (3/6 & 10)	\$6,500,000 rate reduction (4/15)
Georgia	None	None	Ga. Pub. Comm. Ass'n (3/12); Consumer's Util. Counsel (3/20)	Cost Study Filed
Kentucky	None	\$1,700,000	MCI (3/20)	\$1,700,000 rate reduction (tariff pending)
Louisiana	None	\$2,600,000	MCI (3/19)	\$2,600,000 rate reduction (to be acted on 4/16, retroactive to 4/1)
Mississippi	None	\$1,400,000	None	\$1,400,000 rate reduction (3/20)
North Carolina	None	\$2,400,000	MCI (3/27); N.C. Payphone Ass'n (3/20)	\$2,400,000 rate reduction (4/1)
South Carolina	None	\$2,500,000	S.C. Pub. Comm. Ass'n (2/27); Consumer Adv. (3/6)	\$2,500,000 rate reduction (pending)
Tennessee	None	\$800,000	TN Payphone Ass'n (3/14)	\$800,000 rate reduction (pending)

NYNEX				
STATE	EXPLICIT RATE ELEMENTS	HISTORIC REVENUE SHORTFALL	INTERVENORS (Date)	ADJUSTMENT (Effective Date)
Connecticut	None	None	None	None
Maine	None	None	None	None
Massachusetts	None	\$11,300,000	MCI (3/28) New Eng. Publ. Payphone Council (3/26) Att'y Gen'l (3/14) Nat'l Cons. Law Center (3/28)	\$32,100,000 Price Cap Adjustment (retroactive to 4/1)
New Hampshire	None	\$2,400,000	MCI (3/31) Office of Cons. Adv. (automatic) Union Tel. (3/6) New Eng. Publ. Payphone Council (3/17) N.H. Legal Assistance (3/12)	\$4,200,000 Rate Adjustment (expected 4/14)
New York	None	None	None	None (3/31 Order)
Rhode Island	None	None	None	None (Letter filed and accepted 2/19)
Vermont	None	\$1,800,000	Dep't Pub. Srv. (3/12) MCI (4/7)	\$1,900,000 Extended Area Service Expansions (Pending)

PACIFIC/NEVADA BELL

STATE	EXPLICIT RATE ELEMENTS	HISTORIC REVENUE SHORTFALL	INTERVENORS (Date)	ADJUSTMENT (Effective Date)
California	None	None	None	None
Nevada	None	None	None	Cost study Filed; Open Proceeding.

SOUTHWESTERN BELL

STATE	EXPLICIT RATE ELEMENTS	HISTORIC REVENUE SHORTFALL	INTERVENORS (Date)	ADJUSTMENT (Effective Date)
Arkansas	None	**	None	**
Kansas	None	None	AT&T (3/6); Kansas Payphone Ass'n (2/7)	Open Proceeding
Missouri	None	\$600,000	MCI (2/21); Midwest Ind. Coin Payphone Ass'n (3/24)	Open Proceeding
Oklahoma	None	None	AT&T, MCI, various PSPs (not on subsidy issue)	Open Proceeding
Texas	None	None	MCI (1/24), AT&T (2/21), Texas Payphone Ass'n (3/14)	Open Proceeding
** Under investigation; filing addressing subsidy issue will be made prior to April 15.				

U S WEST				
STATE	EXPLICIT RATE ELEMENTS	HISTORIC REVENUE SHORTFALL	INTERVENORS (Date)	ADJUSTMENT (Effective Date)
Arizona	None	None	None	None
Colorado	None	None	None	None
Idaho	None	None	None	None
Iowa	None	None	None	None
Minnesota	None	None	None	None
Montana	None	None	None	None
Nebraska	None	None	None	None
North Dakota	None	None	None	None
New Mexico	None	None	MCI (3/21) AT&T (3/17)	Open Proceeding
Oregon	Yes**	None	None	No Adjustment to Rates; \$636,526 Revenue Requirement Adjustment**
South Dakota	Yes**	None	None	No Adjustment to Rates; \$209,948 Revenue Requirement Adjustment**
Utah	None	None	None	None
Washington	Yes**	None	None	No Adjustment to Rates; \$2,081,169 Revenue Requirement Adjustment**
Wyoming	None	None	None	None
**No adjustment to rates required because current intrastate CCL charge is below the current and adjusted revenue requirement.				

EXHIBIT B

A5691-524 "C" April 14
ord

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

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April 10, 1997

Ex Parte Filing

Mary Beth Richards
Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

In re Implementation of the Pay Telephone
Reclassification and Compensation Provisions
of the Telecommunications Act of 1996,
CC Docket No. 96-128

Dear Mary Beth:

I am writing on behalf of the RBOC Payphone Coalition to request a limited waiver of the Commission's intrastate tariffing requirements for basic payphone lines and unbundled features and functions, as set forth in the Commission's Orders in the above-captioned docket. I am also authorized to state that Ameritech joins in this request.

As we discussed yesterday, and as I explained in my Letter of April 3, 1997, none of us understood the payphone orders to require existing, previously-tariffed intrastate payphone services, such as the COCOT line, to meet the Commission's "new services" test. It was our good faith belief that the "new services" test applied only to new services tariffed at the federal level. It was not until the Bureau issued its "Clarification of State Tariffing Requirements" as part of its Order of April 4, 1997, that we learned otherwise.

In most States, ensuring that previously tariffed payphone services meet the "new services" test, although an onerous process, should not be too problematic. We are gathering the relevant cost information and will be prepared to certify that those tariffs satisfy the costing standards of the "new services" test. In some States, however, there may be a discrepancy between the existing state tariff rate and the "new services" test; as a result, new tariff rates may have to be filed. For example, it appears that, in a few States, the existing state tariff rate for the COCOT line used by independent PSPs may be

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

Mary Beth Richards
April 10, 1997
Page 2

too low to meet the "new services" test and will therefore have to be raised.

In order to allow deregulation to move forward and ensure that LEC PSPs are able to compete on a level playing field starting, as planned, on April 15, 1997, we propose that the limited waiver issued by the Commission on April 4 for interstate tariffs apply to intrastate payphone tariffs as well. Specifically, we request that the Commission grant us 45 days from the April 4th Order to file new intrastate tariffs, in those States and for those services where new tariffs are required. Each LEC will undertake to file with the Commission a written ex parte document, by April 15, 1997, attempting to identify those tariff rates that may have to be revised.

Unlike with federal tariffs, there is of course no guarantee that the States will act within 15 days on these new tariff filings, particularly where rates are being increased pursuant to federal guidelines. Provided, however, that we undertake and follow-through on our commitment to ensure that existing tariff rates comply with the "new services" test and, in those States and for those services where the tariff rates do not comply, to file new tariff rates that will comply, we believe that we should be eligible for per call compensation starting on April 15th. Once the new state tariffs go into effect, to the extent that the new tariff rates are lower than the existing ones, we will undertake to reimburse or provide a credit to those purchasing the services back to April 15, 1997. (I should note that the filed-rate doctrine precludes either the state or federal government from ordering such a retroactive rate adjustment. However, we can and do voluntarily undertake to provide one, consistent with state regulatory requirements, in this unique circumstance. Moreover, we will not seek additional reimbursement to the extent that tariff rates are raised as a result of applying the "new services" test.)

The LECs thus ask the Commission to waive the requirement that effective intrastate payphone tariffs meet the "new services test," subject to three conditions: (1) LECs must file a written ex parte with the Commission by April 15, 1997, in which they attempt to identify any potentially non-compliant state tariff rates, (2) where a LEC's state tariff rate does not comply with the "new services" test, the LEC must file a new state tariff rate that does comply within 45 days of the April 4, 1997 Order, and (3) in the event a LEC files a new tariff rate to comply with the "new services" test pursuant to this waiver, and the new tariff rate is lower than the previous tariff rate as a result of applying the "new services" test, the LEC will undertake

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

Mary Beth Richards
April 10, 1997
Page 3

(consistent with state regulations) to provide a credit or other compensation to purchasers back to April 15, 1997.

The requested waiver is appropriate both because special circumstances warrant a deviation from the general rule and because the waiver will serve the public interest. Because the federal "new services" test has not previously been applied to existing state services -- and because the LECs did not understand the Commission to be requiring such an application of the test until the Commission issued its clarification order just a few days ago -- special circumstances exist to grant a limited waiver of brief duration to address this responsibility. In addition, granting the waiver in this limited circumstance will not undermine, and is consistent with, the Commission's overall policies in CC Docket No. 96-128 to reclassify LEC payphone assets and ensure fair PSP compensation for all calls originated from payphones. And competing PSPs will suffer no disadvantage. Indeed, the voluntary reimbursement mechanism discussed above -- which ensures that PSPs are compensated if rates go down, but does not require them to pay retroactive additional compensation if rates go up -- will ensure that no purchaser of payphone services is placed at a disadvantage due to the limited waiver.

Accordingly, we request a limited waiver, as outlined above, of the Commission's intrastate tariffing requirements for basic payphone lines and unbundled features and functions.

We appreciate your urgent consideration of this matter. Copies of this letter have been served by hand on the APCC, AT&T, MCI and Sprint.

Yours sincerely,


Michael K. Kellogg

cc: Dan Abeyta	Christopher Heimann	Brent Olson
Thomas Boasberg	Radhika Karmarkar	Michael Pryor
Craig Brown	Regina Keeney	James Schlichting
Michelle Carey	Linda Kinney	Blaise Scinto
Michael Carowitz	Carol Matthey	Anne Stevens
James Casserly	A. Richard Metzger	Richard Welch
James Coltharp	John B. Muleta	Christopher Wright
Rose M. Crellin	Judy Nitsche	
Dan Gonzalez		

EXHIBIT C

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April 11, 1997

Ex Parte Filing

Mary Beth Richards
Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Comm'n
1919 M Street, N.W., Room 500
Washington, D.C. 20554

In re Implementation of the Pay Telephone
Reclassification and Compensation Provisions
of the Telecommunications Act of 1996,
CC Docket No. 96-128

Dear Mary Beth:

This letter will clarify the request I made yesterday on behalf of the RBOCs for a limited waiver of the Commission's intrastate tariffing requirements for basic payphone lines and unbundled features and functions.

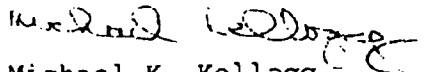
To the best of my knowledge, all the RBOCs have (or will by April 15, 1997, have) effective state tariffs for all the basic payphone lines and unbundled features and functions required by the Commission's order. We are not seeking a waiver of that requirement. We seek a waiver only of the requirement that those intrastate tariffs satisfy the Commission's "new services" test. The waiver will allow LECs 45 days (from the April 4 Order) to gather the relevant cost information and either be prepared to certify that the existing tariffs satisfy the costing standards of the "new services" test or to file new or revised tariffs that do satisfy those standards. Furthermore, as noted, where new or revised tariffs are required and the new tariff rates are lower than the existing ones, we will undertake (consistent with state requirements) to reimburse or provide a credit back to April 15, 1997, to those purchasing the services under the existing tariffs.

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

Mary Beth Richards
April 11, 1997
Page 2

I hope this clarification is helpful. Copies of this letter have been served by hand on the APCC, AT&T, MCI and Sprint.

Yours sincerely,


Michael K. Kellogg

cc: Dan Abeyta	Linda Kinney
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